Elsevier B.V. et al v. UnitedHealth Group, Inc. et al Doc. 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELSEVIER B.V., ELSEVIER INC., and MOSBY, INC., :

Judge Pauley

Plaintiffs, :

-against- : 09 Civ.

UNITEDHEALTH GROUP, INC., ACN GROUP, INC., OPTIMUM CHOICE, INC., OVATIONS, INC., UNIPRISE, INC., UNITED BEHAVIORAL HEALTH, INC., INGENIX, INC., and ABC COMPANY Nos. 1-10, :

'09 CIV 2124

Defendants. :

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COMPLAINT

Plaintiffs Elsevier B.V., Elsevier Inc., and Mosby, Inc. (collectively "Elsevier"), by their undersigned attorneys, for their complaint against defendants UnitedHealth Group, Inc. ("United"), ACN Group, Inc. ("ACN"), Optimum Choice, Inc. ("Optimum"), Ovations, Inc. ("Ovations"), Uniprise, Inc. ("Uniprise"), United Behavioral Health, Inc. ("UBH"), ABC Company Nos. 1-10 ("ABCs") (collectively, "UHG") and Ingenix, Inc. ("Ingenix"), aver:

Nature of the Action

1. This is an action for copyright infringement and breach of contract. Elsevier owns, or exclusively licenses, the copyrights in the scientific books and journals in an online

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database known as ScienceDirect®. Elsevier licenses access to that database to subscribers for a fee. For 2006 and 2007, Elsevier and Ingenix entered into a subscriber agreement that allowed Ingenix, but not its parent or affiliates, to access the ScienceDirect® database for a fee. In breach of that subscriber agreement, Ingenix provided to UHG access to the ScienceDirect® database. UHG then accessed the ScienceDirect® database, and infringed Elsevier's copyrights, without any compensation to Elsevier.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the first, second and third claims for relief in this action pursuant to 28 U.S.C. § 1331 because they arise under 17 U.S.C. § 101 et seq. or 18 U.S.C. § 1030. This Court has subject matter jurisdiction over the fourth claim in this action pursuant to 28 U.S.C. § 1332(a)(2) because there is complete diversity of citizenship between the parties to this claim and because the amount in controversy exceeds $75,000 exclusive of interest and costs. This Court also has subject matter jurisdiction over each claim in this action because each is so related to a claim within the original jurisdiction of this Court that they form part of the same case or controversy within the meaning of Article III of the United States Constitution.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

Parties

4. Elsevier B.V. is a corporation organized and existing under the laws of The Netherlands with its principal place of business at Radarweg 29, 1043 NX Amsterdam, The Netherlands.

5. Elsevier Inc. is a corporation organized and existing under the laws of the State of New York with its principal place of business at 360 Park Avenue South, New York, New York.

6. Mosby, Inc. is a corporation organized and existing under the laws of the State of Missouri with its principal place of business at 11830 Westline Industrial Drive, St. Louis Missouri.

7. United is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business at 9900 Bren Road East, Minnetonka, Minnesota. United is the direct or indirect parent corporation of the remaining defendants.

8. ACN is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business 6300 Olsen Memorial Highway, Golden Valley, Minnesota.

9. Optimum Choice is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business at 4 Taft Court, Rockville, Maryland.

10. Ovations is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business at 9900 Bren Road East, Minnetonka, Minnesota.

11. Uniprise is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 9900 Bren Road East, Minnetonka, Minnesota.

12. UBH is a corporation organized and existing under the laws of the State of California, with its principal place of business at 425 Market Street, San Francisco, California.

13. ABCs are direct or indirect subsidiaries of United, whose identities are presently unknown to Elsevier.

14. Ingenix is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 9900 Bren Road East, Minnetonka, Minnesota.

The Business of Elsevier

15. Elsevier B.V., Elsevier Inc. and Mosby, Inc. are indirect subsidiaries of Reed Elsevier Group PLC. Reed Elsevier is a leading provider of professional information and workflow solutions in the Science, Medical, Legal, Risk Management, and Business sectors. Its famous brands include LexisNexis®,

MARTINDALE-HUBBELL®, Elsevier®, Scopus®, The Lancet®, and ScienceDirect®.

16. ScienceDirect® is an online database offering access to more than 6,000 books and 2,500 journals, including titles such as The Lancet, Tetrahedron Letters, and International Encyclopedia of the Social and Behavioral Sciences. Users of ScienceDirect® have access to almost nine million full-text articles, and more than 75 million abstract records, from all fields of science. Users have a variety of contract options to access ScienceDirect®, which may vary according to the amount of content, level of functionality and archival rights.

17. Although users may access the content of other publishers using the CrossRef® feature of ScienceDirect®, Elsevier owns, or has an exclusive license for, the copyrights in the majority of the content available on ScienceDirect®.

18. Elsevier Inc. or Mosby, Inc., or their predecessors in interest, has received from the United States Register of Copyrights the Certificates of Copyright Registration identified on Schedule A, or has an exclusive license for those registered works.

19. Elsevier B.V. has created, or has an exclusive license for, the works identified on Schedule B, which were created outside the United States. The works that are the

subjects of Exhibits A and B (the "Elsevier Copyrights") are available on the ScienceDirect® database.

Background of this Action

20. Elsevier B.V. and Ingenix entered into a subscriber agreement dated as of December 19, 2005 ("Subscriber Agreement"). Pursuant to the Subscriber Agreement, Elsevier B.V. granted Ingenix access to the ScienceDirect® database for the period January 1, 2006 to December 31, 2006. The parties entered into a renewal of the Subscriber Agreement dated as of October 31, 2006 for the period January 1, 2007 to December 31, 2007.

21. The Subscriber Agreement, among other things, provided that:

- authorized employees of Ingenix could access the ScienceDirect® database;
- Ingenix would have approximately 50 authorized users;
- Ingenix would endeavor to prevent unauthorized use of the ScienceDirect® database; and
- Ingenix would pay a fee of $18,000 for 2006 and $63,750 for 2007.

22. Despite its contractual obligation, Ingenix thereafter provided UHG with access information for the ScienceDirect® database.

23. UHG thereafter accessed the ScienceDirect® database.

24. As a result of its use of the ScienceDirect® database, UHG unlawfully infringed the Elsevier Copyrights.

FIRST CLAIM FOR RELIEF
(Copyright Infringement Against UHG)

25. Elsevier repeats the averments contained in paragraphs 1 through 24 as if set forth in full.

26. The Elsevier Copyrights are valid and enforceable.

27. UHG has infringed the Elsevier Copyrights in violation of 17 U.S.C. § 501.

28. UHG has willfully infringed the Elsevier Copyrights.

29. Elsevier is entitled to recover all damages sustained as a result of UHG's infringing conduct, including (1) UHG's profits, or (2) Elsevier's damages, or alternatively (3) statutory damages, the precise amount to be determined by the trier of fact.

SECOND CLAIM FOR RELIEF
(Contributory Copyright Infringement Against Ingenix)

30. Elsevier repeats the averments contained in paragraphs 1 to 29 as if set forth in full.

31. Ingenix assisted UHG to infringe the Elsevier Copyrights by providing UHG with the access information for the ScienceDirect® database.

32. Ingenix assisted UHG in the manner described in the preceding paragraph knowing and intending that UHG would infringe the Elsevier Copyrights.

33. Elsevier is entitled to recover all damages sustained as a result of the infringing conduct of Ingenix, including (1) Ingenix's profits, (2) Elsevier's damages, or alternatively (3) statutory damages, the precise amount to be determined by the trier of fact.

THIRD CLAIM FOR RELIEF
(Unauthorized Computer Access Against UHG)

34. Elsevier repeats the averments contained in paragraphs 1 through 33 as if set forth in full.

35. The computer system on which Elsevier's ScienceDirect® database resides is used in interstate commerce or communication, and is a protected computer under 18 U.S.C. § 1030.

36. When UHG accessed the ScienceDirect® database without authorization, UHG intentionally accessed a protected computer without authorization.

37. UHG's unauthorized access of a protected computer has caused damage to Elsevier in an aggregate amount of over $5,000 during a one-year period.

38. UHG's conduct in violation of 18 U.S.C. § 1030 has harmed Elsevier. As a result, Elsevier is entitled to damages, the precise amount to be determined by the trier of fact.

FOURTH CLAIM FOR RELIEF
(Breach of Contract against Ingenix)

39. Elsevier B.V. repeats the averments contained in paragraphs 1 to 38 as if set forth in full.

40. The Subscriber Agreement constitutes an enforceable contract between Elsevier B.V. and Ingenix.

41. Ingenix breached the Subscriber Agreement by, inter alia, allowing UHG to access the ScienceDirect® database.

42. Elsevier B.V. is entitled to recover damages from Ingenix for breach of contract in an amount in excess of $75,000 exclusive of interest and costs, the precise amount to be determined by the trier of fact.

WHEREFORE, Elsevier demands judgment:

A. Awarding Elsevier its damages or defendants' profits, or alternatively, at Elsevier's election, statutory damages between $750 and $150,000, for infringement or contributory infringement of each of the Elsevier Copyrights;

B. Awarding Elsevier B.V. its damages against Ingenix for breach of contract;

C. Awarding Elsevier its costs in this action, including its reasonable attorneys' fees pursuant 17 U.S.C.

§ 505; and

D. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
March 9, 2009

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